IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 654 OF 2000.

Protos Engineering Company P.Ltd... Appellant.

V/s.

The Deputy Commissioner of
Income-tax. ... Respondent.

Shri F.V. Irani with A.R. Jasani for the appellant.

Shri Ashok Kotangale for the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 3.10.2005.

P.C. :

. Heard.

.2 This appeal was admitted on 2 substantial questions of law which read as under:

> .1 Whether the ITAT appreciate that assuming while denying that the above sum of Rs. 3,36,148/- represented a contingent liability, the same having been determined scientifically and accurately was a legitimate deduction in the computation of the appellant's business income?
>
> .2 Whether the TAT erred in its interpretation of section 32AB of the Act and particularly sub-sections (1) and (3) thereof?

3. Learned Counsel appearing for the Revenue does not dispute that so far as first question is concerned, the same is covered by the judgment of

the Apex Court in the case of **Bharat Earth Movers vs. Commissioner of Income-tax (2001) 245 ITR 428.** In this view of the matter, the first question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

4. So far as second question is concerned, the said question is also covered by the judgment of this Court in the case of Commissioner of Income-tax vs. M/s Parle Biscuits Limited in Income Tax Appeal No. 215 of 2002, decided on 23rd August 2004 (unreported), to which one of us (J.P. Devadhar,J.) was a party. This Court while answering the 2nd question relied upon judgment of the Supreme Court in the case of Apollo Tyres Ltd. vs. CIT (255 ITR 273), wherein the Supreme Court has observed as under:

> . " A perusal of section 32AB, as it stood at the relevant time, shows that if an assessee has a total income including income chargeable to tax under the head "Profits and gains of business or profession" and if the income from such business is derived from an "eligible business" and if the assessee has out of such income utilised any amount during the previous year for the purchase of new plant or machinery then it is entitled to a set off of a sum equal to 20 per cent of the profit of such eligible business as computed in the accounts of the assessee which account has been audited in accordance with sub-section (5) of section 32AB.
>
> . The dispute in the present case is in regard to the question whether the assessee's investment in the UTI is

> business, and if so, is it a business which qualifies to be an " eligible business" under section 32AB? In regard to the first aspect, we must note that the Tribunal as a question of fact based on material on record has come to the conclusion that the investment in the UTI by the assessee-company is in the course of its business and its business of manufacture and sale of tyres and sale and purchase of units of the UTI are common in nature and both the businesses are intertwined and interlaced. This finding is accepted by the High Court also. We also find that this business of the assessee- company of buying and selling of units is a business as contemplated under section 32AB of the Act. The question then is: is it an eligible business under the said section ? The term "eligible business" is defined under sub-section (2) of section 32AB. As per that definition, all business of an assessee-company will be an eligible business unless it falls under the type of businesses enumerated in sub-clauses (a) and (b) of section 32AB(2). It is nobody's case that this business of the assessee-company is one of those businesses which fall under business enumerated in sub-clauses (a) and (b) of sub-section (2) of section 32AB. Therefore, there is no doubt that the business of the assessee-company is an eligible business. The fact that it is shown under a different head of income would not deprive the company of its benefit under section 32AB so long as it is held that the investment in the units of the UTI by the assessee-company is in the course of its "eligible business". Therefore,in our opinion, the dividend income earned by the assessee-company from its investment in the UTI should be included in computing the profits of eligible business under section 32AB of the Act."

5. No contrary view has been brought to our notice. Since this Court has relied upon the observations of the Supreme Court and held that the view taken by the Tribunal relating to deduction under section 32AB with regard to income from

interest, rent and dividend would fall within the meaning of "eligible business" was correct, following ratio of the said judgment, we hold that business income earned by the appellant forming part of interest, rent dividend would fall in "eligible business" under section 32AB. In this view of the matter, second question is also answered in favour of the assessee.

6. Appeal is accordingly allowed with no order as to costs.

(J.P. DEVADHAR,J.) **(V.C. DAGA,J.)**